

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Streamlining Deployment of Small Cell	)	WT Docket No. 16-421
Infrastructure by Improving Wireless Facilities	)	
Siting Policies	)	
	)	
Mobilitie, LLC Petition for Declaratory Ruling	)	

**COMMENTS OF THE NC LEAGUE OF MUNICIPALITIES**

These Comments are filed by the NC League of Municipalities in response to the Public Notice, released December 22, 2016, in the above-entitled proceeding.

**INTRODUCTION**

The NC League of Municipalities (League) is a membership organization representing over 540 cities, towns, and villages—nearly all of the incorporated area of North Carolina. Wireless carriers as well as infrastructure providers such as Mobilitie have approached many of the League’s members in recent months, requesting access to the public right of way for deployment of small cell wireless technologies. In response, officials in these municipalities have undertaken the process of educating themselves both about the technical aspects of this technology and the business requirements for deployment, as well as its effects on service levels offered to the public at large. Many of them have entered into negotiations with wireless carriers and infrastructure providers, and have begun the process of revising their ordinances to accommodate the particulars of small cell technologies. The League members share the goal of the Federal Communications Commission of increasing broadband access in underserved areas. And as described below, the League members believe they have made significant strides, in tandem with industry stakeholders, to assure build-out of this technology.

Therefore, the League urges the Commission to exercise caution as it works to enable the widespread deployment of small cell infrastructure throughout the nation. League members oppose a federal one-size-fits all preemption of local siting authority, and they ask the Commission to consider carefully the many differences between communities that necessitate local decisions: variation in state statute, geographic challenges, climate variations, size, budgetary and staff resources, aesthetic character, the type and amount of existing infrastructure, and more. North Carolina is a wide and diverse state in all of these ways, and officials within its cities and towns have the most intimate familiarity with the needs of their communities. The League members ask the Commission to avoid placing any further restrictions on cities as they collaborate with their local wireless carriers and infrastructure providers to integrate this very

new technology, and very new approach to infrastructure development, into their planning and zoning processes in a way that preserves and protects the finite rights of way belonging to their residents.

## **CITY PRACTICES DO NOT PROHIBIT OR HAVE THE EFFECT OF PROHIBITING PROVISION OF SERVICE**

North Carolina municipalities have no incentive to prohibit or have the effect of prohibiting the provision of wireless communications services by private entities. The League members understand the importance of enhancing access to wireless communications services for modern-day businesses, schools, residences, and institutions. In this state, provision of physical infrastructure such as roads, water and sewer systems, and other associated “place-making” investments such as parks and beaches, remains the primary responsibility of municipalities. Therefore, it is not a stretch to state that N.C. municipal officials keep the responsibility of creating 21<sup>st</sup>-Century places at the top of their minds. Because state laws such as N.C. Gen. Stat. §160A, Article 16A, effectively prevent N.C. municipalities from directly providing broadband and wireless communications services to the community, cities and towns in this state must rely even more heavily on the business decisions of private entities to fill this gap.

To that end, N.C. cities and towns have worked proactively to reach agreements with wireless industry stakeholders that open up these communities to small-cell deployment. Far from prohibiting these services, N.C. municipalities grasp the importance of enabling private provision of service. For example, in December, the City of Wilmington city council approved a franchise agreement with Mobilitie, allowing the company access to the public right of way in that city. The City of Raleigh approved a similar agreement months prior to Wilmington’s action.

Further, a group of the state’s largest cities—who face the largest volume of requests for small cell build-out—in recent months engaged in negotiations with AT&T regarding the details of a model small cell ordinance. The cities of Charlotte, Raleigh, Greensboro, Winston-Salem, and Durham all participated in this collaboration, which is still ongoing. When complete, this model ordinance will serve as a template for communities around the state. In a January 24, 2017, email to industry and local government stakeholders, AT&T N.C. Executive Director of Governmental Affairs, Trey Rabon spoke favorably of this process:

“During the course of our conversations, we have been encouraged by the open-minded approach that these municipalities are taking with small cell infrastructure. They recognize the importance of the infrastructure investment to address current densification plans and to prepare for 5g wireless services, the need for timely processing of permit requests, the rationale for viewing small cells as clusters rather than stand-alone cells, and the importance of cost in determining capital build plans.

“They are primarily concerned about safety, noise, and appearance when reviewing permit requests...The municipalities have suggested that industry work with municipal planning departments

to determine the optimal location of small cells as small cell clusters are being designed rather than waiting to present a design at the time of permit application. They could help infrastructure providers better understand any sensitivities that may be presented...Rather than move forward with a design that would require the small cell to be moved due to an infrastructure project at a later date, the municipal officials propose partnering with industry to identify the optimal location on the front-end, saving time and capital for both industry and municipalities...

“In the spirit of collaboration, AT&T provided the attached draft version of a model municipal ordinance to leaders in each of these cities. This model municipal ordinance is based on the CTIA/WIA policy framework and model legislation previously shared with this stakeholder group. Initial feedback from the involved municipalities was positive, and each of the municipal leaders agreed to work together to provide additional feedback in the form of redline edits...

*“We are very encouraged by the discussions and look forward to continuing constructive conversations with local government leaders who are working diligently to ensure small cell infrastructure is deployed in a timely and collaborative manner,”* (emphasis added).

Far from prohibiting deployment of small-cell wireless technologies in their jurisdictions, N.C. cities and towns have responded and continue to respond to this new technology in a comprehensive way.

## **CITIES ARE WORKING PROACTIVELY TO DEPLOY WIRELESS INFRASTRUCTURE**

Starting with updates to state law in 2013 regarding wireless facility siting, N.C. cities and towns set the tone for proactive wireless technology deployment. Due to the changes made in state statute with S.L. 2013-185, the N.C. General Assembly did not need to further update the law as a result of the 2014 FCC order regarding wireless facility siting practices. This bill received near-unanimous votes in both legislative chambers, reflecting the high level of cooperation between industry and local government when negotiating the 2013 changes.

This proactive approach continues now, and N.C. municipalities made great strides over the past year to better understand small cell wireless technology and how to safely deploy it in their jurisdictions. In addition to the collaborations with industry stakeholders described above, numerous municipal officials participated in education events aimed at heightening awareness of this technology. For example, in October, over 125 local officials participated in a small cell forum sponsored by the League that featured speakers from Mobilitie, Verizon, Sprint, the City

of Raleigh, Duke Energy, and the NC Department of Transportation. In addition, a recording of that forum posted to YouTube has received nearly 200 views.

And later this month, local officials statewide will take part in numerous League-initiated educational events designed to heighten awareness of the technology and local government considerations for deployment. First, in partnership with AT&T, Verizon, the Wireless Infrastructure Association, the Cellular Telecommunications and Internet Association, and the N.C. State Broadband Office, the League will host three wireless technology forums across the state of North Carolina. Aimed at local officials, these forums will explain small cell technology and its applications. In addition to information provided by the industry partners listed above, attendees will hear from city staff experts, who will explain the considerations necessary when updating internal procedures and ordinances to accommodate small cell technology in their communities. Based on early registration numbers, the League expects several hundred municipal officials to take part in one of the three forums.

Next, the N.C. Municipal Attorneys Association will receive a one-hour continuing legal education presentation on small cell deployment in North Carolina at the association's late-March meeting. Typically, 150 municipal attorneys from across the state attend this conference. In many cases, one attorney serves as counsel to several municipal clients, thereby extending the reach of information and education on this topic into even more communities.

## **CONCLUSION**

The League would like to thank the Commission for its efforts to better understand the work being done at the local government level to ensure safe, responsible deployment of wireless infrastructure, particularly that built in the public rights of way. We strongly urge the Commission to consider our comments, as well as those submitted by other local government organizations and communities across the country, before taking any action that may adversely affect local governments' rights of way authority.

Respectfully submitted,  
NC League of Municipalities

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